The Builder.

No. CL.

SATURDAY, DECEMBER 20, 1845.

ON Saturday last, a cause was tried before Lord Denman, in the Court of Queen's Bench, having considerable interest for the architectural profession. Mr. George Mair, the architect, was plaintiff, and Mr. Ward, a gentleman of fortune, residing in the Isle of Wight, was defendant. The action was brought to recover a sum of about 511*l.*, alleged to be due from the defendant to Mr. Mair, on account of services rendered in his professional character.

Adopting the substantially correct, abstract of the case that was given in *The Times*, it appeared from the evidence that the defendant had some years ago employed Messrs. Morgan and Lee to construct a mansion upon his demesne at Northwood, and that those gentlemen had furnished the original design for the building, and superintended the construction of the carcase of the house. The defendant, however, interfered very minutely in all the details of the proceedings, and Mr. Lee found his time so much occupied by this particular case, that he was obliged to resign. In these circumstances, Mr. Ward was introduced to Mr. Mair, then, in 1838, a young man who had been but a few years in the practical exercise of his profession, but who enjoyed a high reputation among his professional brethren. Mr. Mair having undertaken the conduct of the work, proceeded to perform all the duties of his position up to a recent period; when he resigned the engagement, in consequence of a difference between himself and his employer as to the principle upon which he was to receive compensation for his services. It did not appear that any contract, either expressed or perhaps implied, had been made between the parties upon this important subject. Mr. Mair alleged his expectation to be that he was to receive a commission of 5 per cent. upon the whole sum which might be expended in carrying his own designs into execution, together with his travelling expenses to and from the Isle of Wight, and a compensation of two guineas a-day for the time actually occupied in going and returning. Mr. Ward, on the other hand, supposed that the compensation in all departments of it, was to be nothing but what his own judgment should approve and his "generosity" bestow. At the time when the final difference and separation took place, he had given to the plaintiff several sums of money, amounting altogether to about 1,100*l.*, beyond which, the plaintiff claimed about 500*l.* more.

The charge made was 5 per cent. on 23,000*l.*; 1,150*l.* and 540*l.* for travelling expenses, time, and money expended for the defendant.

The plaintiff produced a number of witnesses to prove the performance of the works, and that the principles on which he claimed payment were universally acted on by the whole architectural profession; these included Mr. George Smith, Mr. Tite, Mr. Shaw, Mr. Little, Mr. Wyatt, and Mr. Scoles, who all bore testimony to the excellence of more than 400 drawings which had been made for the works. Mr. Wyatt, who had seen the progress of the building, said he would not undertake to make the drawings for a thousand pounds, and Mr. Tite, to whom the plaintiff is much indebted for powerful assistance, declared they were worth 1,400*l.* The works had been in hand several years, and the greatest attention had been paid to the matter by the plaintiff during the whole time. It may be well to mention, for the full understanding of the case, that the defendant had refused to allow an examination of the premises, so that the plaintiff's witnesses were compelled, in order to judge of the fairness of the charges, to obtain from the drawings the cubical contents of the buildings, and put such a sum per foot as they thought just.

The Attorney-general, on the part of the defendant, called no witnesses. Lord Denman, in summing up, told the jury, as he had previously urged during the trial, that, although the architects had all deposed to the existence of a custom to pay a *commission* upon the outlay, such custom could not bind the defendant, unless at the time of making the original engagement he understood that such were the terms upon which compensation was to be made. His lordship's argument was, that this mode of charge induced dishonesty, by making it to the interest of the architect to swell the sum as much as possible, for the sake of his commission! It might be custom, he said, but it certainly was not law. The question, then, for their consideration was, whether the plaintiff was in justice entitled to a larger sum than that which he had already received for the services which he had performed. After a short consultation, the foreman of the jury said: "We find a verdict for the plaintiff *for the whole amount claimed*;"—without any reference, so far as we can learn, to the question of per centage.

The uncertainty which exists as regards architects' charges is embarrassing and hurtful, and calls for removal. Custom is strong: next to law the strongest; but in the face of the opinion expressed by Lord Denman, few would go into court with the view of enforcing a per centage, unless able to shew, by the time occupied, or the actual worth of separate services performed, which is not always practicable, other grounds for the charge. Lord Kenyon ruled, long ago, that a per centage could not be recovered; and Lord Ellenborough, in the matter Chapman, Gardiner, and Upward (architects) *v.* De Tastet, tried in 1817, ruled, that it *could* be; and the jury gave damages after the rate of 5 per cent. upon the total amount of the bills."* In "Starkie's Reports" it is said, relative to this case, that evidence was given that this was the usual mode of charging for the description of business done, and that Lord Ellenborough left it to the jury to say, whether this mode of charging was vicious or unreasonable; and if they thought it was, to deduct accordingly. Mr. Scarlett, on the part of the defendant, urged that it was unreasonable to suppose that a surveyor could be entitled to a remuneration fixed upon the amounts of the bills which he himself was to regulate and settle. It was his interest to swell the sum as much as possible for the sake of his commission; and therefore, he contended, that the plaintiff's demand was not founded in justice.

The assumption of Mr. Scarlett then, and of Lord Denman now, is in reality worth nothing: it is absurd to suppose, that any architect would waste a hundred pounds of his employer's money, and sacrifice the feeling of having done his duty, for a trumpery five pounds. A real objection to this mode of charge would seem to be this—that an architect's ability or standing in the profession goes for nothing. Mr. Brown, Jones (no Inigo), or Robinson, who makes drawings and superintends the erection of a huge warehouse, costing ten or fifteen thousand pounds, and Mr. William, of Wykeham, who designs and carries out a gem of a chapel with an expenditure of a tenth of that sum, are paid very differently by this system: the latter might require scores of drawings where the former needed one, saying nothing of the higher order of mind exhibited, while the remuneration would of course be but a tenth part. Not that a true artist,—one who loves his profession,—would ever think of this, or hesitate a moment between two such works if the choice were offered to him; still this is the pounds, shillings, and pence state of the case, and does not seem to be wholly correct.

Without, however, proposing any alteration in the mode of charge usually adopted, it does appear to be very desirable that its legality or otherwise should be set at rest. The custom is general, and the public know it. Lord Denman says such custom will not bind, unless at the time of making an engagement with an architect, the employer understand that such are the terms upon which compensation is to be made. It is not the custom to enter into an agreement with an architect when his services are required any more than it is with a solicitor, but the mode of charging being universally known, we must consider, with all deference to his lordship, that it *is* understood by an employer if no other terms are stipulated.

The newspaper report states that the jury gave a verdict for the sum demanded, with intimation that it was not founded on a right to the commission, but upon the general value of the services which the plaintiff had performed. This, however, we venture to doubt,—certainly nothing was said by the intelligent foreman in delivering the verdict to induce this belief.

A committee was appointed by the council of the Institute of Architects, last session, to inquire into various points of professional practice. We cannot help thinking it would be advantageous, although we know others view the question differently, if this committee were to state the ordinary charges of the leading architects for different services. That a difference of opinion exists on various points in this respect (without reference to the charge of five per cent. on amount expended, for certain understood services), was shewn in the case before us. Mr. Mair claimed, in addition to the five per cent., the travelling expenses, and two guineas a day for the time occupied in the journeys. All allowed the first, as a matter of course, but with respect to the latter, the practice of his witnesses differed.

We will venture to say, there is not an architect in practice who has not desired to know, at one time or another, what was the ordinary charge of other architects for some particular service.

We shall be glad to assist in supplying this want, and therefore solicit members of the profession to favour us in confidence with a memorandum of their customary charges, and any remarks on the subject that may occur to them,—not to be put forward in their names, but as materials for some general deductions.

* Quoted in Elmes's "Architectural Jurisprudence."

SUPPLY OF WATER.—A local paper says, the directors of the South Shields Water-works purpose, if three thousand families will agree to take the water, to supply the working classes of the town with water *ad libitum* at the rate of a penny per week.